

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 559/91

Ex-Acc No.

198

DATE OF DECISION 15-7-1992

Shri R.L. Panpattiwar Petitioner

Shri G.P. Hardas Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri K.D. Kelkar Advocate for the Respondent(s)

CORAM

The Hon'ble M/s. USHA SAVARA, MEMBER (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

J. Savara
 (MS. USHA SAVARA)
 MEMBER (A).
 15-7-92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

(6)

ORIGINAL APPLICATION NO.559/91.

R.L. Pampattiwar,
Income Tax Inspector,
O/o Deputy Commissioner of I.Tax
Range 2, Saraf Chambers,, Sadar,
NAGPUR - 440 001.

.. Applicant.

Vs.

1. Union of India, through
Secretary, Ministry of
Finance, (Dept. of Revenue),
North Block,
New Delhi - 1.
2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001.
3. Commissioner of Income Tax,
Vidarbha, Nagpur - 440 001.

.. Respondents.

Coram : Hon'ble Ms. Usha Savara, Member (A).

Appearances:

Mr. G.P. Hardas, Advocate
for the applicant.

Mr. K.D. Kelkar, Counsel
for the Respondents.

JUDGMENT :

Dated: 15-7-1992

¶ Hon'ble Ms. Usha Savara, Member (A) ¶

A very short point is the subject matter of this application, whether the applicant, who was in receipt of special pay as U.D.C. working in the Internal Audit Party in Income Tax Department from October, 1975 to 12.9.1977 was entitled to merge the special pay with his pay for fixation of his salary on his promotion as Head Clerk.

2. The Learned Counsel of the applicant, Shri Hardas places reliance on the judgment rendered by the Kerala High Court in W.P.No.4014/77, M.D. Saksaria & 70 Others Vs. Secretary, C.B.D.T., New Delhi, and the

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judgment of Ahmedabad Bench in T.A.184 of 1986 vide judgment dated 28.1.1988. The applicant's representation addressed to C.B.D.T., New Delhi for merging of special pay while fixing his pay on promotion to higher post was rejected. Hence this application.

3. Shri K.D. Kelkar, Learned Counsel for the respondents vehemently opposed the claim of the applicant. Though it was not disputed that the applicant was getting special pay while working in the I.A.P., yet it was denied that this would entitle him to include the special pay for fixation of pay on promotion. He drew our attention to the Government of India circular dated 9.6.1977, which makes it clear that the special pay is given for performance of arduous nature of duties, and is payable as long as you are performing such duties. It is mentioned that special pay granted in these circumstances, is not to be treated as part of basic pay. This circular refers to circular dated 16.5.1974, which discussed the payment of special pay and its effect on promotion.

4. Shri Kelkar opposed the claim on another ground. He referred to order (11) F.R. 22-C, which deals with treatment of special pay for purpose of fixation of pay on promotion. Two conditions are laid down for fixing the pay on promotion in cases where a Government servant is in receipt of a special/^{pay} in a post.

- (i) Special pay should have been granted in "lieu of separate higher scale" e.g., special pay granted to Steno-typist, Clerk-in-charge etc.
- (ii) The special pay should have been continuously drawn in the lower post for a minimum period of 3 years on the date of promotion.

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(iii) In both cases, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post.

5. If these conditions are fulfilled, then the pay in the higher post will be fixed, under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time scale of the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay). The learned Counsel submits that the applicant had not completed 3 years continuous service in the I.A.P. and had not drawn special pay for 3 years continuously as he was posted there in October, 1975, and was promoted as Head Clerk on 13.09.77. For this reason also, it is argued by Shri Kelkar, the applicant's claim Reserves to be rejected.

6. I have heard the learned Counsel for opposite parties, and perused the judgments relied upon. The circulars of the Government of India on the subject have also been scrutinized. F.R. 9(25) defines special pay - an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of -

- (a) the specially arduous nature of the duties; or
- (b) a specific addition to the work or responsibility.

The applicant, a U.D.C. was posted in October, 1975, in the wing of the Department, known as Internal audit party. It was during this period that he drew the special pay of Rs.25/- . The claim for treating the special pay as merged into basic pay for fixation of pay on promotion is based entirely on the ratio of Kerala High Court, and C.A.T. Ahmedabad Bench. These judgments were based on Board's

letter dated 06.12.1972 which clarified that special pay attached to the posts of U.D.C., in internal audit parties should be treated as having been sanctioned in lieu of higher scales of pay. The respondents, in the above cases, relied upon letter dated 31.12.1979, issued by Government of India, which conveyed that it had been inadvertently stated that special pay for the post of U.D.C., in I.A.Ps. should be treated as having been sanctioned in lieu of higher scales of pay. It was further informed that corrections were made in Para 7 of the letter dated 06.12.1972, and instead of "in lieu of higher scales of pay", read "for arduousness of work". However, since this correction was made on 31.12.1979, and it could not have retrospective effect to the prejudice of a Government servant, therefore the order of pay fixation of the petitioners in the above mentioned cases were quashed.

7. The facts in the case before are undisputed. However, it is denied that the special pay was granted to the applicant in lieu of higher pay scales. The circular issued by the Government of India, C.B.D.T. dated 09.06.1977 makes it clear that special pay attached to the post of U.D.C.s in I.A.P.s is given for performance of arduous nature of work, and is payable so long as the person performs such duties. It is specifically mentioned that the special pay granted for arduous nature of work is not to be treated as part of basic pay, but is only protected on promotion by granting personal pay equal to the difference between pay + special pay in the lower scale post, and pay due in the higher scale post. This circular also mentions an earlier circular dated 16.05.1974 in which the issue of payment of special pay to a member of I.A.P. and its effect on promotion has been discussed. Both these circulars clearly lay down that special pay to U.D.C.s in I.A.P.s are given for performance of arduous nature of duties, and such special pay is not treated as part of basic pay. These circulars

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were not placed before the Hon'ble Kerala High Court or the Ahmedabad Bench of C.A.T. The only circular placed before them was dated 31.12.1979, so their judgments were on the basis of that circular. The respondents have placed before me the fact that in reality a clarification had been issued as early as 16.5.1974 regarding the special pay attached to the post of U.D.C.s working in I.A.P.s. This case is distinguishable on facts from the case before the Kerala High Court and the Ahmedabad Bench of the Tribunal, before whom these circulars were not placed at the relevant time. The facts and circumstances before the Hon'ble Kerala High Court and the Ahmedabad Bench were different, and therefore, the judgments are not applicable to the facts and circumstances of this case. The applicant who was working as U.D.C. on special pay in the I.A.P. from October, 1975 to 12.9.1977 is fully covered by the circular dated 16.5.1974.

8. In the facts and circumstances of the case, this application is not allowed, and the prayers of the applicant are rejected. However, there will be no order as to costs.

U. Savara, S.7.92
(MS. USHA SAVARA)
MEMBER (A).

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